

control over the programming, personnel, operations, maintenance and policies of Television Station WTTE. See WTTE Assignment and Use Agreement, para. 2. Consequently, WTTE's proposed transaction envisions the assignor's retention of control over Television Station WTTE. Cf. Southwest Texas Public Broadcast Council, 85 FCC 2d at 715.

14. WTTE's own representations to the Commission cast into doubt the validity of the proposed assignment. They also evidence WTTE's attempt to retain an interest in the license, in direct violation of Section 73.1150(a) of the Commission's Rules. See 47. CFR §73.1150(a); see also Minority Ownership in Broadcasting, 99 FCC 2d at 1250.

15. Sinclair's application contains similar defects. In its application, Sinclair identifies WPGH Licensee, Inc. as the assignee ("assignee"). In its exhibits, however, Sinclair introduces two other entities, WPGH, Inc. ("WPGH"), and Commercial Radio Institute, Inc. ("CRI"). Moreover, the "Purchase Agreement" attached as Exhibit No. 2 describes the assignment of Television Station WPGH-TV's licenses and authorizations from Sinclair to CRI. On the other hand, Exhibit No. 2, which also includes an "Assignment and Use Agreement" between WPGH and the assignee, identifies WPGH, not Sinclair, as the licensee of Television Station WPGH-TV. This agreement describes a transaction involving the assignment of Television Station WPGH-TV's license from WPGH

(which is neither the assignor nor current licensee) to the assignee. The Assignment and Use Agreement, however, states that the "ultimate control over the programming, personnel, operations, maintenance and policies" of the station will be exercised by an entity other than the assignee. Moreover, the agreement specifies that all expenses and capital costs incurred in operating Television Station WPGH-TV must be paid by WPGH and all advertising and other receipts collected in operating the station will be retained by WPGH. Specifically, WPGH (which is neither the proposed assignor nor assignee) will at all times exercise ultimate control over the station. Cf. Southwest Texas Public Broadcast Council, 85 FCC 2d at 715. Clearly, the Sinclair proposal is not a valid assignment. Instead, it results in an unauthorized assignment of license, in that the ultimate control of Television Station WPGH-TV's license will be in the hands of a third party.

16. In sum, the transactions proposed by Chesapeake, WTTE and Sinclair, although represented to the Commission as pro forma assignments, are not assignments at all. In all three cases, the applications themselves demonstrate that the proposed transaction will not result in the "assignee" exercising control over the license. In the case of Chesapeake and WTTE, consummation of the transaction will result in the assignee's name being placed in the Commission's records as the licensee. However, ultimate control over the station will remain in the hands of the assignor. In the case of Sinclair's proposal, consummation of the transaction will

result in a third party exercising control over the station. These proposed assignments clearly violate both Commission Rule and policy and therefore should not be sanctioned by the Commission.

17. In view of the foregoing, Scripps Howard respectfully requests that the above-referenced application of Chesapeake (originally granted although incomplete) be denied if considered on its merits. WTTE's and Sinclair's applications should also be denied on their merits.

Respectfully submitted,

Scripps Howard Broadcasting
Company

By: 

Donald Zeifang
Linda R. Bocchi

November 12, 1991

Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

CERTIFICATE OF SERVICE

I, Rebecca R. Rigsbee, a secretary in the law firm of Baker & Hostetler, do hereby certify that a copy of the foregoing, "Petition for Reconsideration" was mailed on this 12th day of November, 1991, to the following:

*Clay Pendarvis, Esq.
Federal Communications Commission
1919 M Street, N.W.
Room 700
Washington, D.C. 20554

*Alan Glasser, Esq.
Federal Communications Commission
1919 M Street, N.W.
Room 700
Washington, D.C. 20554

Martin Leader, Esq.
Fisher, Wayland, Cooper and Leader
1255 Twenty-Third Street, N.W.
Suite 800
Washington, D.C. 20037-1125

* Hand Delivery

Rebecca R. Rigsbee
Rebecca R. Rigsbee

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

In re the Applications of)	
)	
Chesapeake Television, Inc.)	File Nos. BALCT-910926KN
WTTE, Channel 28, Inc.)	BALCT-910926KM
Sinclair Broadcast Group, Inc.)	BALCT-910926KO
)	
For Assignment of Licenses)	

TO: Clay Pendarvis, Chief
Television Branch

RECEIVED

NOV 15 1991

OPPOSITION TO
PETITION FOR RECONSIDERATION

Federal Communications Commission
Office of the Secretary

1. On November 12, 1991, Scripps Howard Broadcasting Company ("Petitioner") filed a Petition for Reconsideration of the above-referenced applications. The above-referenced applications were filed on FCC Form 316 because they did not involve a substantial change in ownership or control. See Section 309(c)(2)(b) of the Communications Act of 1934, as amended. Accordingly, no Petition to Deny is permissible. See Section 309(d)(1) of the Communications Act of 1934, as amended.

2. The Petitioner has not made any standing argument and has not indicated how it is aggrieved by the Commission's decision. The Petitioner is acting more like a public attorney general than as an aggrieved party.^{1/}

^{1/} A Petition to Deny an application on FCC Form 316 does not lie, thus, a non-party has no right to file a Petition for Reconsideration which fails to allege any specific harm. Since there is no substantive or procedural basis for this Petition, Petitioner's motives are suspect.

3. What seems to have escaped the Petitioner is that the transactions set forth in these applications were pro forma assignments of licenses and that the assignors and assignees are owned, whether directly or indirectly through wholly-owned subsidiaries, by the same four individuals, namely, David D. Smith, J. Duncan Smith, Robert E. Smith and Frederick G. Smith. Thus, Petitioner's citation of Southwest Texas Public Broadcast Council, 85 FCC 2d 713 (1981) is inapposite. Moreover, in Southwest Texas Public Broadcast Council the Commission found that there was no transfer of control. As the above-referenced assignment applications indicated, they were filed at the request of the lender to the ultimate parent corporation of the licensees and their intervening subsidiaries.

4. Petitioner's confusion about the transactions is readily apparent from its discourse concerning WPGH-TV, Pittsburgh, Pennsylvania. Most of the rhetorical questions which Petitioner raises are fully answered in Exhibit 1 to that application which among other things explains (1) that the application is being filed to accommodate a lender; (2) that there are no new parties to the application; (3) the manner in which the license was dropped down to WPGH Licensee, Inc.; and (4) that the officers and directors of Assignee (WPGH Licensee, Inc.) are the officers of the Assignor (Sinclair Broadcast Group, Inc.), all of whom are U.S. citizens. Thus, the transaction was fully explained and the questions which Petitioner has raised are answered. Moreover, this arrangement for holding the broadcast license of WPGH-TV is similar to the business arrangement under which Channel 53, Inc. and Channel 53 Licensee, Inc., the former


owner and licensee of WPGH-TV from whom Sinclair Broadcast Group, Inc. purchased the station, had organized their operation of television station WPGH-TV.

5. The Commission has been granting applications like these for many years. If Petitioner has a particular problem with such arrangements, the appropriate route is a Petition for Rule Making so that the issue can be ventilated on an industry-wide basis rather than through attacking a single business plan in one particular case.

Respectfully submitted,

CHESAPEAKE TELEVISION, INC.
WTTE, CHANNEL 28, INC.
SINCLAIR BROADCAST GROUP, INC.

Fisher, Wayland, Cooper
and Leader
1255 23rd Street. N.W.
Suite 800
Washington, D.C. 20037
(202) 659-3494

By: 
Martin R. Leader
Kathryn R. Schmeltzer
Carroll John Yung

Their Attorneys

Dated: November 15, 1991

CERTIFICATE OF SERVICE

I, Deniece B. Phillips, a secretary in the law firm of Fisher, Wayland, Cooper & Leader, hereby certify that a copy of the foregoing "Opposition to Petition for Reconsideration" was delivered via first class mail, postage prepaid, this the 15th day of November, 1991, to the following:

*Clay Pendarvis, Esq.
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

*Alan Glasser, Esq.
Federal Communications Commission
1919 M Street, N.W., Room 700
Washington, D.C. 20554

Donald Zeifang, Esq.
Linda R. Bocchi, Esq.
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036


Deniece B. Phillips

*Via Hand-Delivery

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

In re the Applications of)	
)	
Chesapeake Television, Inc.)	File Nos. BALCT-910926KN
WTTE, Channel 28, Inc.)	BALCT-910926KM
Sinclair Broadcast Group, Inc.)	BALCT-910926KO
)	
For Assignment of Licenses)	
TO: Clay Pendarvis, Chief		
Television Branch		

REPLY

Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of Television Station WMAR-TV, Baltimore, Maryland, through counsel and pursuant to Section 1.106(h) of the Federal Communications Commission's Rules, 47 C.F.R. § 1.106(h), respectfully submits its reply to the November 18, 1991 Opposition to Petition for Reconsideration filed by Chesapeake Television, Inc. ("Chesapeake"), WTTE, Channel 28, Inc. ("WTTE") and Sinclair Broadcast Group, Inc. ("Sinclair") (herein collectively referred to as Respondents).

In its petition, Scripps Howard objected to the grant of the above-referenced assignment applications on the ground that the transactions described therein were not assignments at all. Specifically, in all three cases, the transactions do not result in the "assignee" exercising control over the license. In the case of Chesapeake and WTTE, consummation of the transactions results

in the assignees' names being placed in the Commission's records as the licensees. However, ultimate control over the operation of the stations remains in the hands of the assignors. In the case of Sinclair's application, consummation of the transaction results in a third party exercising control over the operation of the station.

Respondents, in their Opposition, do not even attempt to address the actual flaws in the transactions. Instead, they try to dismiss the flaws by arguing that the same four individuals, directly and indirectly, own the assignor and assignee. It is also on this basis that Respondents unsuccessfully attempt to distinguish Southwest Texas Broadcast Council, 85 F.C.C.2d 713 (1981).

Specifically, the Opposition is based solely on the allegation that since the individuals involved in the transactions remain the same, the identity of the particular licensee entity is irrelevant. A review of the Commission's Rules, however, reveals that this proposition is erroneous. Section 73.3540 of the Commission's Rules requires that the parties to any "assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests" file an F.C.C. "Short Form" 316, requesting Commission consent prior to the assignment. 47 C.F.R. § 73.3540(a), (f)(5). Consequently, since the Commission prohibits assignments from one entity to a commonly owned or controlled entity without prior Commission

consent, it is clear that the Commission does not view commonly owned entities as interchangeable licensees.

Moreover, over the years it has been well established by the courts and the Commission that the principal indicia of control, examined to determine who exercises ultimate control over the license, are finances, personnel matters and programming. It was as authority for these guidelines that Scripps Howard cited Southwest Texas Broadcast Council, 85 F.C.C.2d at 715. Notably all three of Respondents' assignment applications describe transactions that result in entities other than the assignees exercising ultimate control over the programming, personnel, operations, maintenance, finances and policies of the stations. See Chesapeake Assignment and Use Agreement, para. 2; WTTE Assignment and Use Agreement, para. 2; Sinclair Assignment and Use Agreement, para. 2. Therefore, the consummation of the transactions results in entities other than the assignees controlling the licenses. The fact that the same four individuals are principals of all the entities involved in these transactions does not address the issue as to which entity ultimately controls the license.

In summary, a review of Respondents' applications and their Opposition reveals that the transactions are not valid assignments. Nowhere in their filings do Respondents establish that, upon consummation, ultimate control of the licenses (as defined by the courts and the Commission) will be exercised by the assignees. Rather, Respondents have, in specific detail, described

transactions which result in entities other than the assignees controlling the licenses. Contrary to Respondents' unfounded assertions, it is not Commission policy to process and grant an assignment application involving a transaction which results in an entity other than the assignee being vested with the right to determine the basic policies concerning the operation of the station.

WHEREFORE in view of the foregoing, Scripps Howard renews its request that the Commission deny the above-captioned applications.

Respectfully submitted,

Scripps Howard Broadcasting
Company

By: 

Donald Zeifang
Linda R. Bocchi

Baker & Hostetler
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036

December 4, 1991

CERTIFICATE OF SERVICE

I, Rebecca R. Rigsbee, a secretary in the law firm of Baker & Hostetler, do hereby certify that a copy of the foregoing, "Reply" was mailed on this 4th day of December, 1991, to the following:

*Clay Pendarvis, Esq.
Federal Communications Commission
1919 M Street, N.W.
Room 700
Washington, D.C. 20554

*Alan Glasser, Esq.
Federal Communications Commission
1919 M Street, N.W.
Room 700
Washington, D.C. 20554

Martin Leader, Esq.
Fisher, Wayland, Cooper and Leader
1255 Twenty-Third Street, N.W.
Suite 800
Washington, D.C. 20037-1125

* Hand Delivery


Rebecca R. Rigsbee

**BAKER
&
HOSTETLER**
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036 • (202) 861-1500
FAX (202) 861-1783 • TELEX (850) 2357278
WRITER'S DIRECT DIAL NUMBER (202) 861-1751

November 18, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: 777550
Station WNTJ627
777551
Station WNTK362
777552
Station WNEO587

Dear Ms. Searcy:

Scripps Howard Broadcasting Company ("Scripps Howard"), licensee of Television Station WMAR-TV, Baltimore, Maryland, through counsel, respectfully submits its informal objection to the above-referenced applications.

On October 3, 1991, Chesapeake Television Licensee, Inc. ("Assignee"), filed the above-referenced applications requesting the Federal Communications Commission's consent to the assignment of the above-referenced private microwave licenses from Chesapeake Television, Inc. ("Chesapeake") to Assignee.

In its applications, Assignee advises the Commission that the private microwave stations assist in the operations of Television Station WBFF, which serves Baltimore, Maryland. Assignee further explains that the proposed assignments are part of an overall assignment of that television station license from Chesapeake to Assignee. See BALCT-910926KN.

The assignment application for Television Station WBFF was filed on September 26, 1991. The application was accepted for filing on Friday, October 4, 1991. See FCC Public Notice, Broadcast Applications, Report No. 15100, released October 4, 1991. The application was granted on the next business day, Monday, October 7, 1991. See FCC Public Notice, Broadcast Actions, Report No. 21225, released October 11, 1991. On November 12, 1991, Scripps Howard filed a petition requesting reconsideration of the grant.

Scripps Howard objected to Chesapeake's proposed television station assignment on the grounds that it was not an assignment at all. Specifically, in Chesapeake's assignment application for Television Station WBFF, it stated that upon grant of the application and consummation of the assignment, Chesapeake (the assignor) would continue to operate and control the television station, thereby, in essence, retaining its interest in the station. This admission, in and of itself, raised serious questions about the proposed television license assignment.

Notably, a review of Chesapeake's "Assignment and Use Agreement," which was late-filed */ as an amendment to the television license assignment application, revealed that the assignor would "at all times exercise ultimate control over the programming, personnel, operations, maintenance and policies" of Television Station WBFF. See Chesapeake Television Station WBFF Assignment

Ms. Donna R. Searcy
November 18, 1991
Page 3

Chesapeake's proposed transaction was not a valid assignment in that the assignor would retain control over the license. The television license assignment application, therefore, violated the Commission's Rules and policies. It is on this basis that Scripps Howard requested that the Commission deny the television station assignment application.

Since the above-referenced private microwave applications are part of the overall faulty proposed assignment transaction, they too violate the Commission's Rules and policies. Therefore, in view of the foregoing, Scripps Howard respectfully requests that the Commission deny the private microwave assignment applications.

Sincerely,



Donald Zeifang
Linda R. Bocchi
Counsel for Scripps
Howard Broadcasting Company

cc: Michael B. Hayden
Chief, Microwave Branch

Martin R. Leader, Esquire
Counsel for Chesapeake Television, Inc.

continued footnote
25, 1991, nearly a month after the grant date.

RECEIPT COPY

LAW OFFICES

FISHER, WAYLAND, COOPER AND LEADER

1255 TWENTY-THIRD STREET, N.W.

SUITE 800

WASHINGTON, D. C. 20037-1170

TELEPHONE (202) 659-3494

TELECOPIER (202) 296-6518

WRITER'S DIRECT NUMBER

BEN S. FISHER
(1890-1954)

CHARLES V. WAYLAND
(1910-1980)

OF COUNSEL
JOHN O. HEARNE

MCI MAIL: FWCLDC

BEN C. FISHER
GROVER C. COOPER
MARTIN R. LEADER
RICHARD R. ZARAGOZA
CLIFFORD M. HARRINGTON
JOEL R. KASWELL
KATHRYN R. SCHMELTZER
DOUGLAS WOLOSIN
BRIAN R. MOIR
DAVID D. OXENFORD
BARRY H. GOTTFRIED
ANN K. FORD
BRUCE D. JACOBS
ELIOT J. GREENWALD
CARROLL JOHN YUNG
JOHN JOSEPH MCVEIGH
BARRIE D. BERMAN
JOHN K. HANE III
BRUCE F. HOFFMEISTER
MICHELLE N. PLOTKIN
SCOTT R. FLICK
FRANCISCO R. MONTERO
GREGORY L. MASTERS*
MATTHEW P. ZINN
ROBERT C. FISHER
LAUREN ANN LYNCH*
BRIAN J. CARTER
GLENN S. RICHARDS*

*NOT ADMITTED IN D.C.

November 27, 1991

RECEIVED

NOV 27 1991

Federal Communications Commission
Office of the Secretary

VIA HAND-DELIVERY:

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Stations WNTJ627, WNTK362, WNEO587
FCC File Nos. 777550, 777551, 777552
Response to Informal Objection

Dear Ms. Searcy:

1. On November 18, 1991, Scripps Howard Broadcasting Company ("Scripps Howard") filed an Informal Objection against the above-referenced pro forma Assignment Applications, which seek to assign the above-referenced private microwave stations from Chesapeake Television, Inc. ("CTI") to its wholly owned subsidiary, Chesapeake Television Licensee, Inc. ("CTLI"). These private microwave stations are licensed under Part 94 of the Commission's Rules. Scripps Howard in its Informal Objection has given no indication as to how Scripps Howard's interests are adversely affected by these stations or their proposed assignment to CTLI.

2. At the outset, CTI notes that the Informal Objection of Scripps Howard is procedurally defective. Scripps Howard cites to no provision that would permit the filing of an objection in this case. No petitions to deny may be filed against these applications of CTI because they do not involve a substantial change in ownership or control. See Section 1.962(b)(2) of the

Donna R. Searcy, Secretary
November 27, 1991
Page 2

Commission's Rules. Furthermore, because these applications are not Part 73 applications, the informal objection provisions of Section 73.3587 of the Commission's Rules do not apply.

3. As indicated in the above-referenced applications, the proposed assignment of these private microwave stations is part of an assignment of Television Broadcast Station WBFF from CTI to CTLI. Such assignment of Station WBFF(TV) has already been granted by the Commission and consummated. See FCC File No. BALCT-910926KN. On November 12, 1991, Scripps Howard filed a Petition for Reconsideration against this assignment of Station WBFF(TV), against which Petition CTI filed an Opposition on November 15, 1991.

4. Scripps Howard here in essence repeats the arguments that it made in its Petition for Reconsideration. The thrust of Scripps Howard's argument is that the proposed assignments are invalid because the assignor, CTI, would retain control over the assigned licenses and, additionally, that Section 73.1150(a) of the Commission's Rules would be violated.

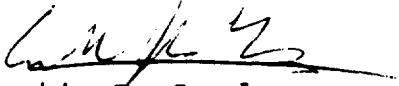
5. CTI notes that Section 73.1150(a) does not even apply here because the above-referenced applications are governed by Part 94 not Part 73 of the Commission's Rules. Scripps Howard fails to cite to any other provision under Part 73 of the Commission's Rules that would apply to these applications.

Donna R. Searcy, Secretary
November 27, 1991
Page 3

Baltimore, Maryland, the motives of Scripps Howard in filing its frivolous Informal Objection are purely retaliatory in nature.

For the foregoing reasons, the Informal Objection of Scripps Howard should be denied and the three applications of CTI should be granted.

Respectfully submitted,


Martin R. Leader
Kathryn R. Schmeltzer
Carroll John Yung
Counsel for Chesapeake
Television, Inc.

CJY/dp
3070-007.ds3

~~cc: Michael R. Hauder, Chief, Microwave Branch~~

BAKER
&
HOSTETLER
COUNSELLORS AT LAW

WASHINGTON SQUARE, SUITE 1100 • 1050 CONNECTICUT AVENUE, N.W. • WASHINGTON, D.C. 20036 • (202) 861-1500
FAX (202) 861-1783 • TELEX 2357276
WRITER'S DIRECT DIAL NUMBER (202) 861-1624

December 12, 1991

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: 777550
Station WNTJ627
777551
Station WNTK362
777552
Station WNE0587

Dear Ms. Searcy:

Scripps Howard Broadcasting Company ("Scripps Howard"),
[REDACTED]